

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRIS CARLSON, individually and on behalf of all persons similarly situated,

No. 2:20-cv-01150 MJP

Plaintiff,

AMENDED STIPULATED PROTECTIVE ORDER

V.

HOME DEPOT U.S.A., INC., a foreign corporation; and THE HOME DEPOT, INC., a foreign corporation,

Defendants.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to

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1 confidential treatment under the applicable legal principles, and it does not presumptively
2 entitle parties to file confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include the following documents and tangible things
5 produced or otherwise exchanged:

6 (a) data regarding hours worked, wages, overtime, or other compensation earned
7 by or paid to employees, however, Plaintiff may use the information in court filings if with
8 permission of the employee or if the employee is not specifically identified;

9 (b) employee personnel records or other personal information, only if the
10 disclosure of the personnel records or other personal information would violate the privacy
11 rights of any individual under the Washington Public Records Act, RCW 42.56.050;

12 (c) confidential personal identifying information and financial information of any
13 party or putative class member;

14 (d) any information that the producing party is obligated by contract or state or
15 federal law to keep confidential;

16 (e) confidential/proprietary data system; and

17 (f) commercial, business, financial, or proprietary information which is
18 competitively sensitive, has competitive commercial value, or would otherwise adversely
19 affect a party’s business, commercial, economic or financial interests

20 3. SCOPE

21 The protections conferred by this agreement cover not only confidential material (as
22 defined above), but also (1) any information copied or extracted from confidential material;
23 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
24 testimony, conversations, or presentations by parties or their counsel that might reveal
25 confidential material.

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1 However, the protections conferred by this agreement do not cover information that is
2 in the public domain or becomes part of the public domain through trial or otherwise.
3

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 4.1 Basic Principles. A receiving party may use confidential material that is
5 disclosed or produced by another party or by a non-party in connection with this case only for
6 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
7 disclosed only to the categories of persons and under the conditions described in this
8 agreement. Confidential material must be stored and maintained by a receiving party at a
9 location and in a secure manner that ensures that access is limited to the persons authorized
10 under this agreement.

11 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
12 ordered by the court or permitted in writing by the designating party, a receiving party may
13 disclose any confidential material only to:

14 (a) the receiving party’s counsel of record in this action, as well as
15 employees of counsel to whom it is reasonably necessary to disclose the information for this
16 litigation;

17 (b) the officers, directors, and employees (including in house counsel) of
18 the receiving party to whom disclosure is reasonably necessary for this litigation, unless a
19 particular document or material produced is for Attorney’s Eyes Only and is so designated;

20 (c) experts and consultants to whom disclosure is reasonably necessary for
21 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
22 (Exhibit A);

23 (d) the court, court personnel, and court reporters and their staff;

24 (e) copy or imaging services retained by counsel to assist in the duplication
25 of confidential material, provided that counsel for the party retaining the copy or imaging
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1 service instructs the service not to disclose any confidential material to third parties and to
2 immediately return all originals and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
5 Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.
6 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential
7 material must be separately bound by the court reporter and may not be disclosed to anyone
8 except as permitted under this agreement;

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information;

11 (h) Plaintiff Chris Carlson, unless a particular document or material
12 produced is for Attorney’s Eyes Only and is so designated;

13 (i) Any person who is a member of any class certified by the Court in this
14 action (i.e., who does not opt out), provided Plaintiff’s attorneys limit the disclosure of
15 confidential information and documents for purposes of prosecution of this action; and

16 (j) Mediators or other persons engaged in alternative dispute resolution
17 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

18 4.3 Filing Confidential Material. Before filing confidential material or discussing
19 or referencing such material in court filings, the filing party shall confer with the designating
20 party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating
21 party will remove the confidential designation, whether the document can be redacted, or
22 whether a motion to seal or stipulation and proposed order is warranted. During the meet and
23 confer process, the designating party must identify the basis for sealing the specific
24 confidential information at issue, and the filing party shall include this basis in its motion to
25 seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets
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1 forth the procedures that must be followed and the standards that will be applied when a party
2 seeks permission from the court to file material under seal. A party who seeks to maintain the
3 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
4 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result
5 in the motion to seal being denied, in accordance with the strong presumption of public access
6 to the Court's files.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each
9 party or non-party that designates information or items for protection under this agreement
10 must take care to limit any such designation to specific material that qualifies under the
11 appropriate standards. The designating party must designate for protection only those parts of
12 material, documents, items, or oral or written communications that qualify, so that other
13 portions of the material, documents, items, or communications for which protection is not
14 warranted are not swept unjustifiably within the ambit of this agreement.

15 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
16 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
17 unnecessarily encumber or delay the case development process or to impose unnecessary
18 expenses and burdens on other parties) expose the designating party to sanctions.

19 If it comes to a designating party's attention that information or items that it designated
20 for protection do not qualify for protection, the designating party must promptly notify all other
21 parties that it is withdrawing the mistaken designation.

22 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
23 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
24 ordered, disclosure or discovery material that qualifies for protection under this agreement
25 must be clearly so designated before or when the material is disclosed or produced.

1 (a) Information in documentary form: (e.g., paper or electronic documents
2 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
3 proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that
4 contains confidential material. If only a portion or portions of the material on a page qualifies
5 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
6 making appropriate markings in the margins).

7 (b) Testimony given in deposition or in other pretrial proceedings: the
8 parties and any participating non-parties must identify on the record, during the deposition or
9 other pretrial proceeding, all protected testimony, without prejudice to their right to so
10 designate other testimony after reviewing the transcript. Any party or non-party may, within
11 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,
12 designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party
13 desires to protect confidential information at trial, the issue should be addressed during the pre-
14 trial conference.

15 (c) Other tangible items: the producing party must affix in a prominent
16 place on the exterior of the container or containers in which the information or item is stored
17 the word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
18 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
20 designate qualified information or items does not, standing alone, waive the designating party’s
21 right to secure protection under this agreement for such material. Upon timely correction of a
22 designation, the receiving party must make reasonable efforts to ensure that the material is
23 treated in accordance with the provisions of this agreement.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS
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1 6.1 Timing of Challenges. Any party, or non-party who has produced documents in
2 this litigation, may challenge a designation of confidentiality at any time. Unless a prompt
3 challenge to a designating party's confidentiality designation is necessary to avoid foreseeable,
4 substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of
5 the litigation, a party does not waive its right to challenge a confidentiality designation by
6 electing not to mount a challenge promptly after the original designation is disclosed.

7 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
8 regarding confidential designations without court involvement. Any motion regarding
9 confidential designations or for a protective order must include a certification, in the motion
10 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
11 conference with other affected parties in an effort to resolve the dispute without court action.
12 The meet and confer shall occur within five (5) business days after the challenging party's
13 request for a meet and confer, unless otherwise agreed to by the parties. The certification must
14 list the date, manner, and participants to the conference. A good faith effort to confer requires
15 a face-to-face meeting or a telephone conference.

16 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
17 intervention, the designating party may file and serve a motion to retain confidentiality under
18 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
19 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and
20 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and
21 burdens on other parties) may expose the challenging party to sanctions. All parties shall
22 continue to maintain the material in question as confidential until the court rules on the
23 challenge.

24 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
25 OTHER LITIGATION

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If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery

1 order or agreement that provides for production without prior privilege review. The parties
2 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.
3

4 10. NON TERMINATION

5 The confidentiality obligations imposed by this agreement shall remain in effect until
a designating party agrees otherwise in writing or a court orders otherwise.
6

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 DATED this 19th day of November, 2020.

9 SCHROETER GOLDFMARK & BENDER

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11 By: 
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13 ELIZABETH A. HANLEY, WSBA #38233
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19 Attorneys for Plaintiff

20 DATED this 19th day of November, 2020.

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6 Attorneys for Defendants

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8 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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10 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
any documents in this proceeding shall not, for the purposes of this proceeding or any other
11 federal or state proceeding, constitute a waiver by the producing party of any privilege
12 applicable to those documents, including the attorney-client privilege, attorney work-product
13 protection, or any other privilege or protection recognized by law.

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15 DATED: November 19, 2020.

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19 The Honorable Marsha J. Pechman
20 United States District Court Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on _____ [date] in the case of Carlson v. Home Depot USA, Inc., et al, Case No. 2:20-cv-01150-MJP . I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed:

Printed name:

Signature:

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